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and European Financial Group EFG (Luxembourg) S.A.*

**UNITED STATES BANKRUPTCY COURT  
SOUTHERN DISTRICT OF NEW YORK**

In re:

FAIRFIELD SENTRY LIMITED, *et al.*,

Debtors in Foreign Proceedings.

FAIRFIELD SENTRY LIMITED, *et al.* (In  
Liquidation), acting by and through the Foreign  
Representatives thereof,

Plaintiffs,

-against-

THEODOOR GGC AMSTERDAM, *et al.*,

Defendants.

FAIRFIELD SENTRY LIMITED, *et al.* (In  
Liquidation), acting by and through the Foreign  
Representatives thereof,

Plaintiffs,

-against-

EFG BANK, *et al.*,

Defendants.

Ch. 15 Case

Case No. 10-13164 (BRL)

Jointly Administered

Adv. Pro. No. 10-03496 (BRL)

(Procedurally Consolidated Under This  
Matter)

Adversary Proc. No. 10-03625 (BRL)

FAIRFIELD SENTRY LIMITED, *et al.* (In Liquidation), acting by and through the Foreign Representatives thereof,

Plaintiffs,

-against-

ZURICH CAPITAL MARKETS COMPANY, *et al.*,

Defendants.

FAIRFIELD SENTRY LIMITED, *et al.* (In Liquidation), acting by and through the Foreign Representatives thereof,

Plaintiffs,

-against-

ABN AMRO SCHWEIZ AG a/k/a ABN AMRO  
(SWITZERLAND) AG, *et al.*,

Defendants.

FAIRFIELD SENTRY LIMITED, *et al.* (In Liquidation), acting by and through the Foreign Representatives thereof,

Plaintiffs,

-against-

ABN AMRO SCHWEIZ AG a/k/a ABN AMRO  
(SWITZERLAND) AG, *et al.*,

Defendants.

FAIRFIELD SENTRY LIMITED, *et al.* (In Liquidation), acting by and through the Foreign Representatives thereof,

Plaintiffs,

-against-

BANCO ATLANTICO GIBRALTER LTD. a/k/a  
EFG BANK (GIBRALTER) LTD., *et al.*,

Defendants.

Adversary Proc. No. 10-03787 (BRL)

**OBJECTION OF EFG DEFENDANTS TO THE FOREIGN REPRESENTATIVE’S  
MOTION SEEKING LIMITED RELIEF FROM ORDER STAYING REDEEMER  
ACTIONS AND ENTRY OF ORDER DIRECTING DEFENDANTS TO MAKE  
EXPEDITED INITIAL DISCLOSURES ON BENEFICIAL HOLDERS AND  
AUTHORIZING AMENDMENT TO COMPLAINTS IN REDEEMER ACTIONS**

Defendants EFG Bank AG f/k/a EFG Private Bank SA a/k/a EFG Bank SA Switzerland (“EFG Bank”), EFG Bank (Monaco) f/k/a EFG Eurofinancier D’Invest MCL (“EFG Monaco”), and European Financial Group EFG (Luxembourg) S.A. (“EFG Luxembourg”) (collectively, the “EFG Defendants” or “EFG”) by and through their undersigned counsel, object to the Foreign Representative’s May 25, 2012 Motion Seeking Limited Relief From Order Staying Redeemer Actions and Entry of Order Directing Defendants to Make Expedited Initial Disclosures on Beneficial Holders and Authorizing Amendment to Complaints in Redeemer Actions (“Expedited Disclosure Motion”).

## **I. The EFG Defendants Join in Certain Other Objections**

In order to avoid burdening the Court with duplicative briefing, the EFG Defendants hereby adopt and incorporate by reference:

- The objection filed on June 8, 2012 by Cleary Gottlieb Steen & Hamilton in Adv. Pro. No. 10-03619, along with the accompanying declarations of Professor Nicolas Jeandin, Professor Luc Thévenoz, and Professor Alain Macaluso;<sup>1</sup>
- The objection filed on June 8, 2012 by Cravath, Swaine & Moore LLP in Adv. Pro. No. 10-03509; and
- The objection filed on June 8, 2012 by King & Spalding LLP in Adv. Pro. No. 11-01486.

## **II. Ordering the Requested Relief Would Likely Cause EFG Monaco to Violate Monegasque Law**

Disclosure by EFG Monaco of the information sought by the Liquidator in the Expedited Disclosure Motion is proscribed by Monegasque banking privacy laws and Monegasque data privacy laws. *See* the accompanying Declaration of Jean-Marie Canac, sworn to June 8, 2012 (the “Canac Declaration”). Such a violation is a criminal offense under Monegasque law, punishable by a fine and by one to six months in prison. *Id.* ¶¶10, 12.

Under Monegasque banking secrecy law any member of the Board of Directors, management, or employee of a bank or financial institution is bound by professional secrecy, which prohibits the disclosure of customer identities and information to third parties. *Id.* ¶7. There are certain exceptions for disclosures to regulatory agencies, affiliate financial institutions within a consolidated group, and courts overseeing criminal proceedings. *Id.* ¶¶7-8. However, because the Expedited Disclosure Motion seeks disclosure of EFG Monaco’s customer information to the Liquidator and not one of the applicable French or Monegasque regulatory agencies, and because the Expedited Discovery Motion is made within a civil proceeding, none of these exceptions

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<sup>1</sup> Because EFG Bank is a Swiss Bank, (*see* Complaints in Adv. Pro. No. 10-3625, at ¶28; Adv. Pro. No. 10-3634, at ¶41; Adversary Pro. No. 10-3635, at ¶62; Adversary Pro. No. 10-3636, at ¶67 Cleary’s arguments regarding Swiss law apply equally to EFG Switzerland, and because EFG Luxembourg is a Luxembourg Bank, *see* Complaints in Adv. Pro. No. 10-3787, at ¶28), Cleary’s arguments regarding Luxembourg law apply equally to EFG Luxembourg.

applies. *Id.* ¶10. Consequently, EFG Monaco could only disclose customer information to the Liquidator if each of the relevant customers consented. *Id.* Absent consent, violation of the banking secrecy laws is a criminal offense, punishable by incarceration for one to six months and a fine. *Id.*

Additionally, Monegasque law imposes certain restrictions on institutions such as EFG Monaco that collect, record, process, or store information that identifies a specific or identifiable person, and proscribes disclosure of this information to third parties. *Id.* ¶11. As with the banking secrecy laws, there are exceptions for disclosure to certain Monegasque government agencies. Absent such exceptions, none of which are applicable to the Expedited Disclosure Request, disclosure to third parties may only be made if the customer consents. *Id.* Violation of the relevant data privacy laws is a criminal offense punishable by incarceration of one to six months and a fine. *Id.*

Consequently, absent customer consent, if this court were to grant the Expedited Disclosure Motion, EFG Monaco and its officers, directors, and employees would be subject to criminal liability in Monaco, including incarceration, for compliance. *Id.* ¶12. Some of the entities or persons whose identities are sought by the Expedited Disclosure Request may no longer be customers of EFG Monaco, and EFG Monaco may no longer have accurate contact information to seek consent. Additionally, it is likely, that many persons or entities will not consent to EFG's disclosure of their identities to the liquidator. Accordingly, if this court were to grant the Expedited Disclosure Motion, EFG Monaco would not be able to comply without subjecting its officers, directors, and employees to criminal liability under Monegasque law. *Id.* at ¶12.

### **Conclusion**

For the reasons stated in this objection and those objections adopted hereby, EFG respectfully submits that this Court should deny the Motion. EFG's filing of this objection is

without prejudice to or waiver of any rights or defenses, including, without limitation, defenses based upon lack of personal jurisdiction and improper service of process.

Dated: New York, New York  
June 8, 2012

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